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BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Joint Application of Cellular Communications, Inc. and PacTel Corporation for Approval, If Required, of the Purchase and Sale of Capital Stock and of the Formation of a Joint Venture, New Par, to Operate Their Cellular Companies in Ohio. ) Case No. 91-467-RC-UNC

FINDING AND ORDER

The Commission finds:

- 1) On March 8, 1991, Cellular Communications, Inc. (CCI) and PacTel Corporation (PacTel) filed with the Commission a joint application, as supplemented on May 7, 1991, seeking approval of PacTel's acquisition of an equity interest in CCI. The joint applicants also seek approval of the formation of a joint venture whereby a newly created entity, New Par, would oversee the management operations of certain entities affiliated with CCI and PacTel. These entities own and control the CCI and PacTel affiliates which have received certification from this Commission to provide cellular services in Ohio. The joint applicants alternatively request, however, that the Commission find that it does not have jurisdiction over either the equity purchase or the formation of the joint venture. The joint applicants have provided the following information in this proceeding:
  - a) CCI is a Delaware corporation and is the ultimate owner of eight cellular telephone companies which hold certificates issued by this Commission to provide cellular services in the Cleveland, Akron, Canton, Columbus, Dayton, Cincinnati, Lorain/Elyria, Mansfield, Springfield, and Hamilton/Middletown Metropolitan Statistical Areas (MSAs).
  - b) PacTel is a California corporation which ultimately owns and controls one Ohio cellular telephone company, Toledo Cellular Telephone Company,

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- which provides service to the Toledo and Lima MSAs. PacTel also owns other cellular systems in the state of Michigan.
- c) The joint applicants have agreed, pursuant to an "Amended and Restated Agreement and Plan of Merger and Joint Venture Organization" dated December 14, 1990, that PacTel will acquire an equity interest in CCI and that the joint applicants will consolidate their Ohio and Michigan nonwireline cellular telephone interests through a joint venture.
- d) CCI has formed two new Delaware corporations, CCI Newco, Inc. (Newco) and Newco Sub, Inc. (Newco Sub), which is a wholly-owned subsidiary of Newco, to facilitate the equity purchase. Newco Sub will merge with and into CCI and each outstanding share of pre-merger Newco Sub stock will be converted into CCI stock. CCI will continue as the surviving corporation. In addition, each outstanding share of pre-merger CCI stock will be converted into a share of Newco stock, making Newco the publicly-traded parent of CCI. Immediately following this merger, PacTel will purchase five percent of Newco's common stock. The December 14, 1990 joint venture agreement further provides that PacTel may gradually increase its ownership interest in Newco to 100 percent during a period of five years.
- e) Pursuant to the joint venture agreement, CCI and PacTel have also agreed to form, immediately following the above-described merger, a general partnership entity to be known as New Par. New Par will be owned equally by PacTel and Newco until such time as PacTel may acquire a 100 percent interest in Newco. The CCI and PacTel subsidiaries which hold interests in the various partnerships which, in turn,

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own and operate the respective cellular telephone companies that provide service in Ohio (the certificated companies) will exchange their interests in these partnerships for a pro rata partnership interest in New Par. The partnerships will continue to own the same assets and certificates under which they provide cellular service in Ohio. The effect of these transactions is that New Par will oversee the management operations of the partnerships. New Par will not directly own any cellular assets nor be the holder of any Ohio certificates.

- f) The FCC has already approved the above-described transaction.
- g) The approval of the joint applicants' request will not result in any changes to the certificated companies' currently effective rates and tariffs.
- h) It appears that, subsequent to the consummation of the above transactions, the certificated companies will continue to have the financial ability and the technical expertise to provide quality cellular telephone service in Ohio. The joint applicants believe that combining their cellular systems in the manner described will improve operating efficiencies due to economies of scale in areas such as administration, information systems, retail marketing, retail advertising, and purchasing, and that the consolidation will result in the adoption of the optimal operating and technical practices of each applicant's system.
- i) It appears that the above transactions will not adversely affect the customers of the involved cellular telephone companies.

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- 2) The certificated companies are telephone companies as defined in Section 4905.03(A)(2), Revised Code, and public utilities as defined in Section 4905.02, Revised Code, and are, therefore, subject to the jurisdiction of the Commission under the authority of Sections 4905.04 and 4905.05, Revised Code.
- 3) The joint venture agreement between CCI and PacTel will not affect the partnerships' interest in the certificated companies which actually provide the cellular services involved in this proceeding. The partnerships will continue to own the certificated companies and, as far as the certificated companies' customers are concerned, there will be no apparent difference in operations, quality of service, or rates. As such, the joint applicants contend that the transactions involved in this proceeding are not subject to the jurisdiction of the Commission. More specifically, the joint applicants maintain that jurisdiction is lacking because, pursuant to Section 4905.48, neither CCI nor PacTel is a public utility as defined in Chapter 4905, Revised Code, and because, pursuant to Section 4905.402, Revised Code, neither entity provides basic local exchange service in this state. The joint applicants further argue that, since the Commission's jurisdiction is specifically confined by these statutes to transactions between public utilities or basic local exchange service providers, the Commission cannot extend its jurisdiction to the transactions at hand through its general supervisory powers contained in Sections 4905.05 and 4905.06, Revised Code.
- 4) The Commission has consistently rejected the jurisdictional arguments made by the joint applicants, finding that the Commission has jurisdiction under its general supervisory powers contained in Sections 4905.05 and 4905.06, Revised Code, to ensure that, when control of a regulated public utility is transferred, the regulated entity will continue to have the financial and technical capability to serve the public convenience and necessity. Toledo Cellular Telephone Company, et al., Case No. 87-474-RC-ATC (July 16, 1987); Mobile Communications Corporation of America, et al., Case No. 88-744-RC-UNC (June 14, 1988); Parkersburg Cellular Telephone

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Company, Inc., Case No. 89-643-RC-ACE (Entry dated February 14, 1991); National Telephone Services, Inc., et al., Case No. 90-589-TP-ATC (August 2, 1990); Cellular Long Distance, Inc., Case No. 90-1796-TP-ACE (March 28, 1991). The arguments raised by the applicants relate to the transactions between CCI and Pactel as if viewed in isolation. The appropriate focus should be on the transactions' effect on the certificated companies which are subject to the continuing jurisdiction of the Commission. Clearly, the exercise of our continuing jurisdiction over the general condition, capitalization, operations, and management of the certificated companies affected by this proceeding, as provided in Section 4905.06, Revised Code, does not constitute an expansion of our statutory powers. Accordingly, we will assert jurisdiction over this application.

- 5) After reviewing the pertinent filings in this matter, the Commission concludes that the joint application should be approved. In approving the transactions, we note that the ultimate control of the certificated companies, immediately following the consummation of the joint venture, rests in Pactel and Newco through their joint partnership in New Par. We find that the joint partnership possesses the technical expertise and financial ability to assume the ultimate ownership interest in the certificated companies. We also note that, should it exercise its options to acquire a 100 percent interest in Newco, Pactel would gain exclusive control over both New Par and the certificated companies. Although we also find that Pactel has the requisite financial and technical abilities to assume such control, we direct the joint applicants to notify the Commission in writing at any time that Pactel's ownership interest in Newco is increased.

It is, therefore,

ORDERED, That, in accordance with Finding (5), the joint application is approved in its entirety. It is, further,

ORDERED, That the joint applicants notify the Commission in writing of the effective date of the joint venture, no later than thirty days after its consummation. It is, further,

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ORDERED, That the joint applicants notify the Commission in writing at any time PacTel increases its ownership interest in Newco. It is, further,

ORDERED, That nothing in this finding and order shall be binding on the Commission in any subsequent investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this finding and order be served upon each party of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Craig A. Glazer, Chairman\*

J. Michael Biddison  
J. Michael Biddison

Ashley C. Brown

Slynn Barry Butler  
Slynn Barry Butler

Richard M. Pannelly  
Richard M. Pannelly

DS/pdc

\*The Chairman has recused himself from this case.

Entered in the Journal

MAY 16 1991

A True Copy

Gary E. Vigorito  
Gary E. Vigorito  
Secretary